

## **The complaint**

Miss M complains that AXA Insurance UK Plc rejected a claim on her home buildings insurance policy.

## **What happened**

Miss M made a claim on her home insurance after she said her property had been damaged by flooding. She said flood water had run off her neighbour's drive after they had their drive re-laid. She obtained a report from a surveyor that said there had been flooding at Miss M's property due to the way the neighbour's new drive had been constructed.

AXA appointed loss adjusters to consider the claim. They wrote to Miss M on behalf of AXA saying the claim wasn't covered because

- The claim had been logged as accidental damage.
- The damage was not due to one-off accidental damage but to faulty workmanship and/or design.
- The policy excludes accidental damage caused by faulty workmanship, defective design or use of defective materials; and damage to drives, patios and paths unless the home has been damaged at the same time and by the same cause.

Miss M complained but AXA didn't change its decision. In the final response to Miss M's complaint AXA confirmed the claim had been registered as accidental damage and, as the damage related to faulty workmanship, it was not covered. But it said there had been some delay replying to the complaint and paid compensation of £25 in respect of this.

When Miss M referred the complaint to this Service, our investigator said he thought the claim should be covered, as there had been flooding and the policy provided flood cover. He didn't think it was fair to apply the exclusion for faulty workmanship if the work related to the neighbour's property, not Miss M's.

AXA disagreed and provided further comments. I won't set them out in full but the key points include:

- What's happened in this case is not a flood – the build up of water would not have been rapid and there was no sudden release; the water is static by virtue of it pooling at the lowest point where it is collecting. So it does not meet the policy requirements.
- The damage is not caused by a one-off insured event, but by repeated instances of water ingress and damp during normal weather due to defects in design.
- The defects affect Miss M's drive as well as the neighbour's.

The investigator considered AXA's comments but didn't change his view. Despite further correspondence, no agreement was reached and so the complaint has been passed to me to determine.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy provides flood cover, which is described as "Loss or damage resulting from flood".

Flood is defined as "*an invasion of the property by a large volume of water caused by a rapid build-up or sudden release from outside the building*".

AXA says this was not flood damage and so there's no cover under this part of the policy. Taking the definition of flood in the policy, this requires water getting into Miss M's property following a rapid build up or sudden release from outside. That is what's happened here.

In the first instance, it's for a policyholder to prove their claim. What happened was that, following heavy rain, water ran down her neighbour's drive, overflowed into Miss M's drive and then into her property. She has provided video and photographic evidence showing the amount of water running down the drive and of her having to put sandbags in place to stop it getting into her house.

This happened more than once. Each time, the water built up quickly and flowed onto her property in a short space of time. This caused damage to her home, including damage to the flooring.

Miss M has also provided expert evidence confirming her property was damaged as a result of the flooding, and that this was caused by the way the neighbour's new drive was constructed.

Based on the evidence Miss M has provided, I'm satisfied what happened was a flood and it's difficult to describe it otherwise. So the claim should have been dealt with on that basis.

AXA says it considered the claim under the accidental damage section of the policy. And there are exclusions under that section for damage

- *to drives, patios and paths unless your home has been damaged at the same time and by the same cause...*
- *by or arising from faulty workmanship, defective design or use of defective materials*

If AXA wishes to rely on these exclusion, the onus is on AXA to show they apply.

Although there was some damage to Miss M's drive, there was damage to her home as well. So that exclusion wouldn't seem to be relevant.

AXA says while it might not rely on the exclusion for faulty workmanship to another person's property, there was faulty workmanship on Miss M's drive – in particular work done by the contractors after the issues first arose, which extended the drainage on her property, was also defective.

While that work didn't fully eradicate the issue, the cause of the problems was still the work done next door. In any event, this exclusion only applies to claims for accidental damage –

not to flood claims. And the claim should be dealt with under the flood section. So it's not reasonable to rely on this exclusion.

Miss M raised other issues concerning a possible claim against her neighbours, and an injury she suffered when she fell after the drive was flooded. Those are separate issues and AXA is only responsible for dealing with the damage claim.

For these reasons, I don't think it was fair for AXA to reject the claim, which it should deal with. Since AXA didn't accept the claim was covered at all, it didn't take any further action to assess the damage or consider how to deal with it. It should now do so.

The problems Miss M has had with her property would have been very upsetting in any event. She's explained the impact this has had on her and her son's health. Having her claim rejected added to her distress and has caused her more inconvenience. I agree that compensation is warranted to reflect this. AXA made a payment of £25 but taking into account the impact on Miss M and the amount of time this has been going on, I think a further payment of £375 is fair.

### **My final decision**

I uphold the complaint and direct AXA Insurance UK Plc to

- accept the claim, ignoring the exclusion for faulty workmanship, defective design or use of defective materials, and assess it in line with the remaining policy terms;
- pay compensation of £375

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 12 August 2024.

Peter Whiteley  
**Ombudsman**